

Jurisdiction

2. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) because the parties are citizens of different States and the amount in controversy exceeds \$75,000.

3. Essroc is a Pennsylvania corporation with its principal place of business in Nazareth, Pennsylvania. Heritage-Crystal Clean, LLC is an Indiana limited liability company with one member, Heritage-Crystal Clean, Inc. Heritage-Crystal Clean, Inc. is a Delaware corporation with its principal place of business in Elgin, Illinois. Therefore, the parties are citizens of different states.

4. Venue is proper in this district under 28 U.S.C. § 1391(b) because Essroc resides in this district and substantial part of the events giving rise to the claim occurred in this district.

The Parties

5. The Plaintiff, Heritage-Crystal Clean, LLC, provides parts cleaning, containerized waste management, and used oil collection services to a broad range of customers from its approximately 75 transfer facilities across the country. It also operates a used oil re-refinery and used oil recycling unit Indianapolis, Indiana.

6. The Defendant, Essroc Cement Corporation, is a manufacturer of cement and ready mix concrete serving the cement, concrete and construction industries.

Polychlorinated Biphenyls

7. Polychlorinated biphenyls ("PCBs") are a group of man-made organic chemicals consisting of carbon, hydrogen and chlorine atoms. PCBs were manufactured in the U.S. from 1929 until 1979, when further manufacturing was banned.

8. Because of their non-flammability, chemical stability, high boiling point, and electrical insulating properties, PCBs were used in numerous industrial and

commercial applications, including electrical, heat transfer and hydraulic equipment. They were also used as plasticizers in paints, plastics, and rubber products; in pigments, dyes, and carbonless copy paper; as well as in other industrial applications.

9. PCBs are often classified by “Aroclors.” Aroclors are mixtures of specific PCB congeners that were manufactured to have different physical properties. These properties are determined largely by the percentage of chlorine in the overall mixture. Different Aroclors are designated by a 4-digit number. The first two digits represent the number of carbon atoms (12) and the second two digits indicate the percentage of chlorine in the mixture. Aroclor 1260, for example, contains 60% chlorine by mass. This case concerns Aroclor 1260.

10. Once released into the environment, whether as a result of the manufacturing process, improper disposal, or spills, PCBs do not readily break down and may remain in the environment for long periods of time.

11. The federal government has found that PCBs cause a wide variety of health effects, including cancer, and bio-accumulate in the environment.

12. For this reason, the federal government, in 1979, not only banned the manufacture of PCBs, but also imposed a stringent set of management controls upon the storage, disposal, and clean-up of PCBs through regulations issued under the Toxic Substances Control Act. 15 U.S.C. §§ 2601 *et seq.* The PCB regulations are found at 40 C.F.R. Part 761.

13. PCBs are also regulated under the used oil regulations issued pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* The used oil regulations are found at 40 C.F.R. Part 279.

14. TSCA regulates PCBs at concentrations of 50 ppm or greater. *See, e.g.*, 40 C.F.R. § 761.20, § 761.60. Used oil containing PCBs at concentrations of 50 ppm or greater must be managed as a PCB material under TSCA and not as a used oil under RCRA. 40 C.F.R. § 279.10(i).

15. With narrow exceptions, PCB liquids with concentrations of 50 ppm or greater must be incinerated in a TSCA-approved incinerator. 40 C.F.R. § 761.60(a). TSCA bars any person from diluting a PCB material, or processing liquid PCBs into a non-liquid form, to avoid an incineration requirement. 40 C.F.R. §§ 761.1(b)(5); 761.50(a)(2). Any person removing PCBs from use must dispose of them in accordance with Section 761.60(a). Persons storing PCB materials must do in accordance with Section 761.65 and properly mark the containers as holding PCBs. *Id.* §§ 761.41-.45. Equipment (non-porous surfaces) contaminated with liquid PCBs must be cleaned to no more than 10 micrograms PCBs per 100 square centimeters. The decontamination standard for organic liquids and non-aqueous organic liquids is less than 2 ppm PCBs. 40 C.F.R. §§ 761.79(b)(2)&(3).

16. Among the factors the USEPA uses in setting a penalty for TSCA violations is the quantity of PCBs, the volume of material contaminated, the concentration of material, and the nature of the violation. *See* Polychlorinated Biphenyls (PCBs) Penalty Policy (USEPA 1990).

17. PCB liquids can cost up to \$5.00 or more per gallon to incinerate. Crystal Clean pays generators for their used oil because of its value as a recyclable commodity.

Facts

18. On or about July 21, 2012, Crystal Clean and Essroc entered into an Oil Collection Service Agreement. (Attached as Exhibit A).

19. Under the Service Agreement, Crystal Clean agreed to pick up used oil from Essroc's cement plant in Nazareth, Pennsylvania.

20. The Service Agreement contained the following Terms and Conditions relevant to this dispute:

6. Customer hereby certifies that (a) the material tendered to HCC shall meet its definition of "used oil" as defined at 40 C.F.R. 279.1, and shall meet the used oil specifications defined at 40 C.F.R. 279.11, and (b) **the material tendered to HCC as used oil shall not have been mixed with any materials regulated under the Toxic Substances Control Act (TSCA), including but not limited to polychlorinated bipheyls (PCBs).**

* * *

Customer agrees to indemnify, and defend HCC, including its directors, officers, employees, contractors, and agents, from and against all claim, demands, actions, lawsuits, penalties, fines, damages, losses, expenses and other liabilities of whatever nature, including clean-up, investigation and monitoring costs, direct, incidental, special and consequential damages and lost profits (and reasonable attorney's and consultants' fees) arising out of or caused by (a) Customer's violation or alleged violation of any environmental law relating to the protection of human health and the environment,(including air, water, soil and natural resources) or the use, storage, handling, release or disposal of any hazardous substances (as defined at 42 U.S.C. § 9601(14)), including without limitation, RCRA, 42 U.S.C. § § 6901 *et seq*, Superfund, 42 U.S.C. § § § 9601 *et seq*, and their state counterparts; (b) Customer's breach of any certification or other term of this Agreement; (c) Customers negligent acts or omissions; or (d) the commingling of a third party's materials with Customer's materials which are in breach of this Agreement. Without limitation, this indemnity shall include and HCC shall bill Customer for all emergency and other remedial services performed by HCC or its contractor, the rates for which are provide at HCC's website www.crystal-clean.com/cenaing_ratesheet.

(Exhibit A) (emphasis added).

21. On August 10, 2012, Essroc completed a Heritage-Crystal Clean Wastestream Survey Form. (Exhibit B). The purpose of this form was for Essroc to describe the type of materials it would be tendering to Crystal Clean for management.

22. Essroc described the material as “non DOT regulated used oil” resulting from a change out of hydraulic oil from conveyor equipment.

23. In Box 16 of the form, Essroc marked “No” in answer to the question of whether the waste contained “any PCBs.” Essroc further indicated that the waste met the definition of used oil under 40 CFR 279, that it had not been mixed with a hazardous waste, and that it contained less than 1000 ppm total halogens. (Exhibit B, p. 2). Essroc further indicated that the waste did not require “any special handling.” (Exhibit B, p. 2).

24. In the Certification section of the Wastestream Survey Form, Essroc represented and warranted that “all Waste Materials to be transferred to HCC hereunder will conform to the description of such Waste Materials contained in the Wastestream Survey or Approval for Waste Services which bears the Wastestream Number associated with that particular stream of Waste Materials.”

25. As part of its contractual arrangement with Crystal Clean, Essroc also executed a Generator Certification providing in part that:

Customer represents, warrants and certifies that the waste materials described in this Agreement for these services meets the definition of used oil in 40 CFR 279 (“Used Oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result for such use is contaminated by physical or chemical impurities”) and has **not been mixed with other regulated materials, including but not limited to polychlorinated biphenyls (PCBs), other materials regulated under TSCA**, or hazardous waste, and recognizes that HCC is relying on this Certification to properly manage these waste materials, and in the event that this Certification is untrue, Customer accepts complete

responsibility for all costs related to the proper management and disposal of the waste materials and any commingled materials.

(Exhibit C) (emphasis added).

26. On August 29, 2012, Radu Lungu, Essroc's Plant Engineer, signed the Generator Certification on behalf of Essroc. (Exhibit C).

27. On or about August 31, 2012, Crystal Clean made a pick-up of used oil from Essroc's Nazareth plant. This pick-up entailed pumping used oil from Essroc's designated drums into a Crystal Clean route truck.

28. In accordance with Crystal Clean's standard practice, the Crystal Clean driver took a sample from each of the Essroc containers. Because Crystal Clean necessarily commingles multiple customer loads into a route truck and then into a railcar, the customer sample allows Crystal Clean, in the event it later finds contamination in the truck or railcar, to trace the source of the contamination back to a specific customer load.

29. The Crystal Clean route truck, containing the Essroc used oil, was then transferred to a railcar at Crystal Clean's Fairless Hills, Pennsylvania for shipment to its Indianapolis used oil re-refinery.

30. On September 26, 2012, the railcar, containing the Essroc used oil along with other customer loads, arrived at Crystal Clean's Indianapolis used oil re-refinery.

31. As part of its standard protocol, Crystal Clean tests the contents of each railcar for PCBs (and other contaminants) prior to off-loading the shipment into the used oil re-refinery tank system.

32. On September 27, 2012, Crystal Clean received the test results for the railcar and found that it contained 120 ppm of PCB Aroclor 1260.

33. Crystal Clean immediately put a hold on the railcar and went through the lengthy process of testing each of the each of the customer loads that made up the shipment.

34. On October 10, 2012, Crystal Clean received the data showing that Essroc retained sample "D" contained 2700 ppm of PCB Aroclor 1260, the same Aroclor found in the railcar.

35. Following the detection of PCBs in the Essroc sample, Crystal Clean promptly put Essroc on notice of the PCB-contaminated load. After the exchange of further communications regarding the PCB-contaminated load, Crystal Clean presented Essroc with an invoice setting out the significant costs, amounting to \$195,958.01, that Crystal Clean was forced to incur to remediate the harm caused by Essroc's contaminated oil. These costs include those Crystal Clean incurred for sampling, testing, decontamination of the transport vehicles, and the transportation and off-site destruction of the PCB-contaminated oil.

36. Since Crystal Clean first notified Essroc of the PCB-contaminated oil, Essroc has persistently avoided taking responsibility for the contamination and ignored Crystal Clean's requests for reimbursement in accordance with the promises Essroc made in the Service Agreement and the Generator Certification.

COUNT ONE - BREACH OF CONTRACT

37. Crystal Clean incorporates Paragraphs 1 through 36 as if specifically set forth herein.

38. On July 21, 2012, Crystal Clean and Essroc entered into a Service Agreement in which Essroc certified, among other things, that the used oil it was

tendering to Crystal Clean would not be mixed with any materials regulated under the Toxic Substances Control Act, including PCBs.

39. In the Service Agreement, Essroc also agreed “to indemnify and defend Crystal Clean from and against all claims, demands, actions, lawsuits, penalties, fines, damages, losses, expenses and other liabilities of whatever nature, including clean-up, investigation and monitoring costs, direct, incidental, special and consequential damages and lost profits (and reasonable attorney’s and consultants’ fees) arising out of or caused by (a) Customer’s violation or alleged violation of any environmental law relating to the protection of human health and the environment, (including air, water, soil and natural resources) or the use, storage, handling, release or disposal of any hazardous substances (b) Customer’s breach of any certification or other term of this Agreement; (c) Customers negligent acts or omissions; or (d) the commingling of a third party’s materials with Customer’s materials which are in breach of this Agreement.”

40. In the Generator Certification, Essroc also represented, warranted, and certified that the waste materials it tendered to Crystal Clean would meet the definition of “used oil” in 40 C.F.R. Part 279, and would not be mixed with PCBs.

41. Essroc further acknowledged and understood, as set forth in the Generator Certification, that Crystal Clean was relying upon the accuracy of Essroc’s certifications and if any certification proved to be untrue, Essroc agreed to accept “complete responsibility for all costs related to the proper management and disposal of the waste materials and any commingled materials.” (Exhibit C).

42. In reliance upon Essroc's certifications, warranties, promises, and representations, Crystal Clean picked up Essroc's used oil from its Nazareth facility on August 31, 2012, and paid Essroc for the recyclable value of the oil.

43. Essroc breached the promises it made in the Wastestream Survey Form, the Service Agreement, and the Generator Certification because:

- a. The used oil actually tendered by Essroc contained PCBs;
- b. The PCB-contaminated oil was not regulated as a used oil under 40 C.F.R. Part 279; and
- c. Essroc failed to comply with numerous regulatory requirements in managing the PCB-contaminated oil, including, but not limited to, (i) failure to properly mark the containers in accordance with the TSCA regulations; (ii) failure to tender the PCB oil to a properly permitted transporter for disposal at a TSCA-authorized facility; (iii) failure to manage the PCB oil under TSCA rather than the RCRA used oil rules; and (iv) failure to properly characterize the PCB oil for proper management.

44. As a result of Essroc's breach of the contract documents, Crystal Clean has incurred damages in the amount of \$195,948.01 (not including attorney's fees) arising from the following remedial activities:

- a. Decontaminating equipment and transport vehicles that came in contact with the PCB oil;
- b. Sampling and testing the used oil contaminated by Essroc's PCB oil;
- c. Destroying the PCB-contaminated oil;

- d. Inventory loss;
- e. Truck downtime;
- f. Management oversight; and
- g. Other costs to be proved at trial

COUNT TWO - NEGLIGENCE

45. Crystal Clean incorporates Paragraphs 1 through 44 as if specifically set forth herein.

46. At all relevant times, Essroc had a duty to exercise reasonable care in the characterization and tendering of used oil to Crystal Clean. Specifically, Essroc had the duty to:

- a. Properly characterize its waste materials;
- b. Properly complete all paperwork it submitted to Crystal Clean in which Essroc certified that its used oil did not contain PCBs;
- c. Ensure that its used oil did not contain PCBs; and
- d. Comply with the regulatory standards for managing PCBs under TSCA and RCRA, including those pertaining to labeling, storage, characterization, transportation, and disposal.

47. Essroc breached one or more of its duties of reasonable care when it tendered used oil containing PCBs to Crystal Clean.

48. As a direct and proximate cause of Essroc's breaches of duty, Crystal Clean has sustained damage to other property that it owns or leases and incurred significant costs to remedy the PCB oil, including the materials it came into contact with.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Heritage-Crystal Clean, LLC, respectfully asks the Court to:

- A. Enter judgment in favor of Crystal Clean and against Essroc Cement Corporation, requiring Essroc to pay Crystal Clean's costs and attorney's fees it incurred as a result of Essroc's tendering of PCB-contaminated oil to Crystal Clean.
- B. Award Crystal Clean compensatory damages.
- C. Award Crystal Clean interest, attorney's fees, consultant's fees and costs of litigation; and
- D. Award such other and further relief as the Court may deem appropriate.

JURY DEMAND

Plaintiff, Heritage-Crystal Clean, LLC demands a trial by jury on all issues so triable.

DATED: October 6, 2014

Respectfully submitted,

FOX ROTHSCHILD LLP

By: *Christine Soares*

Sharon Oras Morgan, Esquire
Attorney ID No. 60068
Christine Soares, Esquire
Attorney ID No. 203497
2000 Market Street, 20th Floor
Philadelphia, PA 19103
Phone: 215.299.2000
Fax: 215.299.2150
smorgan@foxrothschild.com
csoares@foxrothschild.com

*Attorneys for Plaintiff
Heritage-Crystal Clean, LLC*

EXHIBIT A

S/A #: P062567



P062567

51B48



CORPORATE OFFICES
 2175 Point Blvd., Suite 375
 Elgin, IL 60120
 (877) 938-7948
 FED. TAX I.D. # 35-2063150

VISA, MASTERCARD AND AMEX ACCEPTED

Service Agreement

Information for current Heritage-Crystal Clean, LLC (herein "HCC") Customers Only:

HCC Customer #:	137377	Original Service Agreement #:	250888	Placement:	030901
Service Request #:	200739	HCC Generator #:	150504		

This Agreement is made this 50th day of 21, 2012 by and between HCC and:

Name:	ESBAC ESMCC	Name:	
Address:	338 Eastern Nazareth Hwy	Address:	
City:	Bethlehem	City:	
State:	PA	State:	
Zip:	18061	Zip:	
Telephone #:	610 746 3248	Telephone #:	
Contact:	Justin Grubbs	Fax #:	
State EPA ID#:		Fed EPA ID#:	
FEIN#:		E-mail:	

PLEASE SEE ADDITIONAL TERMS, CONDITIONS, AND CERTIFICATIONS ON THE REVERSE SIDE HEREOF AND/OR PROVIDED HEREWITH WHICH ARE PART OF THIS AGREEMENT.

Authorized Customer Representative Signature: [Signature] HCC Representative Signature: [Signature]

Product Code	Qty	Product Description	Shr In	Unit Price
1) 88	100	used oil	8	1.927 (92.00)
2)				
3)				
4)				
5)				

CARRIER: HERITAGE-CRYSTAL CLEAN, LLC	DESTINATION:
	Phone Number:
	Per: <u>[Signature]</u> 7-31-12 HCC Carrier: _____ Date: _____

EPAID# ILN 090 199 852 PHONE NUMBER: (877) 938-7948

Chlor-D-Tec Results	Product Shipping Name	Total	Units
<input checked="" type="checkbox"/> Under 1000 - Pass	Motor Oil/area Regulated used oil	100	6
<input type="checkbox"/> Over 1000 - Failed			

Products	\$
Sales Tax	\$
TOTAL	\$ 92.00
Print Made/Rec'd	\$

VISA _____ AMEX _____ MasterCard _____ Exp. Date _____	Check (Ck # _____) _____ Cash _____ On Acct _____	This Svc Only _____
Card Holder Name: _____ Card #: _____	P.O. #: _____	Every Svc _____

2011 REV 11/30


OFFICE

THIS IS NOT AN INVOICE

FORM NO. 2011-10

1. Customer grants HCC, its employees and agents reasonable access to Customer's premises to perform the services under this Agreement and to perform such on site and off-site testing as it may deem appropriate; provided that HCC shall, however, have no responsibility for testing any materials and/or product and shall have the option of returning any materials or products, which in the sole discretion of HCC do not conform to the terms and conditions and certifications in this Agreement. HCC shall have the right, in its sole discretion, to resell, manage, treat, handle and/or dispose of any materials or products it takes possession of.
2. Customer agrees to indemnify, and defend HCC, including its directors, officers, employees, contractors, and agents, from and against all claims, demands, actions, lawsuits, penalties, fines, damages, losses, expenses and other liabilities of whatever nature, including clean-up, investigation, and monitoring costs, indirect, incidental, special, and consequential damages and lost profits (and reasonable attorney's and consultants' fees) arising out of or caused by (a) Customer's violation or alleged violation of any environmental law relating to the protection of human health or the environment (including air, water, soil and natural resources) or the use, storage, handling, release or disposal of any hazardous substances (as defined at 42 U.S.C. § 9601(14)), including without limitation, RCRA, 42 U.S.C. §§ 9601 et seq. Superfund, 42 U.S.C. §§ 9601 et seq., and their state counterparts; (b) Customer's breach of any certification or other term of this Agreement; (c) Customer's negligent acts or omissions; or (d) the commingling of a third party's materials with Customer's materials which are in breach of this Agreement. Without limitation, this indemnity shall include and HCC shall bill Customer for all emergency and other remedial services performed by HCC or its contractors, the rates for which are provided at HCC's website www.crystal-clear.com/clearing_talesheet. Notwithstanding this indemnity, HCC reserves the right to pursue any and all additional remedies available under federal, state and local laws relating to HCC's services rendered on behalf of Customer hereunder.
3. IN NO EVENT SHALL HCC BE RESPONSIBLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) EVEN IF A PARTY HERETO HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
4. Any work order is deemed part of this Service Agreement. None of the covenants, terms or conditions of this Agreement, to be kept and performed by either party, shall in any manner be altered, waived, modified, changed or abandoned, except by written instrument duly signed and delivered by the other party. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, then such provisions shall be deemed modified to the extent and in the manner necessary to render it valid and enforceable, or if the provision cannot be so modified, it shall be deemed stricken from this Agreement and the remaining terms and provisions of this Agreement shall not be affected thereby. Each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. The party signing this Agreement on behalf of the Customer is duly authorized. This Agreement constitutes the valid and legally obligation of the Customer, enforceable in accordance with its terms and does not violate any other agreement, oral or written, of the Customer. Customer represents and warrants that it is and will remain in full compliance with all requirements of applicable laws, regulations and orders relating to the waste materials specified herein. Customer has not been advised or encouraged by HCC to breach or fail to fulfill any of its contracts or obligations.
5. HCC shall provide the services described in the reverse side herein, subject to the other terms and conditions hereof. The term of this Agreement shall be for a period of one (1) year from the date hereof, which period shall be automatically extended for periods of one (1) year from the date of each service hereunder; subject to (a) written notice of termination by Customer which would be effective as of the end of the then current one (1) year period or (b) termination by HCC at any time in the event of Customer's breach of this Agreement. Unit price is subject to change by HCC at the time of each service, in its sole discretion, based on crude oil market pricing.
6. Customer hereby certifies that (a) the material tendered to HCC shall meet the definition of "used oil" as defined at 40 CFR 279.1, and shall meet the "used oil specifications" defined at 40 CFR 279.11, and (b) the material tendered to HCC as used oil shall not have been mixed with any materials regulated under the Toxic Substances Control Act (TSCA), including but not limited to polychlorinated biphenyls (PCBs). HCC reserves the right to account for bottoms, sediment, and water when determining quality and quantity of used oil collected, which determination shall govern said issues.
7. In the event Customer receives a good faith (written) offer for used oil collection services from a third party ("Third Party Offer") and as a result thereof wishes to terminate this Agreement in accordance with its terms, Customer shall notify HCC of the Third Party Offer and its terms ("Notice") and HCC shall have 60 days from receipt of the Notice to match the terms of the Third Party Offer, in which case this Agreement shall remain in full force and effect and HCC shall continue to provide services hereunder in accordance with the Third Party Offer.

EXHIBIT B

 Heritage-Crystal Clean WASTESTREAM SURVEY FORM email: cc_waste_approvals		150504-3 CCMS # 150504 SA # 365042																																				
HCC Location: PHILADELPHIA		HCC Representative: JOHN SWEENEY																																				
1. GENERATOR INFORMATION: Generator: ESSROC Address: 3938 EASTON NAZARETH PIKE City, State, Zip: NAZARETH, PA 18064 Phone: 610 759 2222 Contact Name: RADU LUNGU E-Mail Address: USEPA ID # PAP000026104		2. PACKAGE: CONTAINER <input checked="" type="checkbox"/> Container Type: DM <input checked="" type="checkbox"/> Container Size: 46G <input checked="" type="checkbox"/> Loosepack: <input type="checkbox"/> Size of Inner Containers: 55, per Lea Vengia 8/28/12 4 Volume: <input type="checkbox"/> One time pickup # drums per shipment 5 # shipments per year 2																																				
		3. GENERATOR STATUS: SQG <input checked="" type="checkbox"/>																																				
4. SIC / NAICS CODE: 3272 If 3312, do you perform Coke Oven Byproduct Recovery Operations? N <input checked="" type="checkbox"/> If 28, 2911, 3312, or 4953, what is the Total Annual Benzene (TAB) in megagrams/year?																																						
5. Common Name: OIL																																						
6. Detailed Description of the Generating Process (required): EQUIPMENT CHANGE-OUT <i>converter equipment</i>																																						
7. DOT Description: <i>DOT Non Regulated (used oil)</i>																																						
8. CHEMICAL COMPOSITION: Use specific chemical names, list all constituents present in wastestream. List all UHCs and F001-F005/F039 constituents. Total composition must equal or exceed 100%																																						
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Constituents</th> <th>Range</th> <th>Units</th> <th>UHC</th> </tr> </thead> <tbody> <tr> <td>OIL <i>(Hydraulic oil)</i></td> <td>100%</td> <td></td> <td rowspan="10"> Generator grants HCC permission to assign UHC/COC for the LDR where appropriate based on analysis, MSDS, and other supporting information? YES <input checked="" type="checkbox"/> </td> </tr> <tr> <td colspan="3">OIL ANALYSIS PENDING - See Attached</td> </tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		Constituents	Range	Units	UHC	OIL <i>(Hydraulic oil)</i>	100%		Generator grants HCC permission to assign UHC/COC for the LDR where appropriate based on analysis, MSDS, and other supporting information? YES <input checked="" type="checkbox"/>	OIL ANALYSIS PENDING - See Attached																												
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OIL ANALYSIS PENDING - See Attached																																						
9. IDENTIFY WASTE CODES: <input type="checkbox"/> Check if CESQG chooses not to use waste codes on shipping papers.																																						
US EPA Waste Codes (all that apply): State Waste Codes:																																						
10. This waste is non-hazardous based on <input checked="" type="checkbox"/> Lab Data <input type="checkbox"/> MSDS <input type="checkbox"/> Generator Knowledge Include copy and check all that apply.																																						
11. Color: BROWN		Appearance: OIL																																				
% Solids:		% Liquids: 100																																				
12. Physical Properties at 70 degrees F: LIQUID <input checked="" type="checkbox"/> SOLID <input type="checkbox"/> SLUDGE <input type="checkbox"/> POWDER <input type="checkbox"/> GAS <input type="checkbox"/>		13. Chemical Properties: pH or pH Range: 7.4																																				
If solid, are there free liquids? NA <input checked="" type="checkbox"/> If no, will waste dump from the drum? N <input checked="" type="checkbox"/> Is the wastestream pumpable? YES <input checked="" type="checkbox"/> Does the wastestream contain debris? NO <input checked="" type="checkbox"/>		Flash Point (°F): >200 <input checked="" type="checkbox"/> <73 73-140 141-200 >200 Boiling Point (°F): >100 <input checked="" type="checkbox"/> <100 >100 Fuel Value (BTU/lb): >10K <input checked="" type="checkbox"/> <2000 2000-5000 5000-10,000 >10,000																																				

14. Check ("X") all that apply. Marking any of these may require additional documentation or follow-up information.		Crystal Clean
<div style="text-align: center;">"X"</div> <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Air Reactive</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Asbestos</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Autoignitable/Pyrophoric</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Biological/Etiological/Medical</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Compressed Gas</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Dioxins</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Explosive</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Herbicides</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Insecticide/Pesticide</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Lab Pack</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Metal fines/powders</div> </div> <div style="width: 50%;"> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Type:</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Oxidizer</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Pathogen/Infectious/Sanitary</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Polymerizable</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Radioactive</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Shock Sensitive</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Spontaneously Combustible</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 2px;">Water Reactive</div> </div> </div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Check if None Apply X</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 15. Does the waste meet the definition of used oil? (per 40 CFR 279) YES <input type="checkbox"/> If yes, Used oil mixed with hazardous waste? N <input type="checkbox"/> Total Halogens (TX) concentration? X <input type="checkbox"/> <1000 PPM <input type="checkbox"/> > 1000 PPM </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 16. Does the waste contain any PCBs? (per 40 CFR 761) NO <input type="checkbox"/> If yes, PCB Concentration? X <input type="checkbox"/> <50 PPM <input type="checkbox"/> >50 PPM Greater than 50 PPM source? X <input type="checkbox"/> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 17. Does this material require any special handling? NO <input type="checkbox"/> If yes, explain: </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 18. Subject to Subpart CC (per 40 CFR 265.1080-1091) NO <input type="checkbox"/> (waste is RCRA regulated with >500 ppm volatile organics) </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 19. Do any exclusions/exemptions apply? NO <input type="checkbox"/> If yes, note the exclusions/exemptions: <div style="display: flex; flex-wrap: wrap; padding: 5px;"> <div style="width: 50%;"><input type="checkbox"/> universal waste</div> <div style="width: 50%;"><input type="checkbox"/> scrap metal</div> <div style="width: 50%;"><input type="checkbox"/> commercial chemical fuel</div> <div style="width: 50%;"><input type="checkbox"/> other</div> </div> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 20. Generated from electroplating process? NO <input type="checkbox"/> <input type="checkbox"/> check if cyanides are used in process </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> 21. Additional Comments: </div> <div style="border: 1px solid black; padding: 5px;"> 22. Check or List Attachments: <input checked="" type="checkbox"/> Lab data <input type="checkbox"/> MSDS <input type="checkbox"/> Other (list) </div>	
16. Certification (sign and date certification) <div style="font-size: small;"> <p>1. This constitutes a "Wastestream Survey" for purposes of services rendered hereunder. ICC will create and upon request, deliver to Customer a document called an "Approval for Waste Services" based on (i) the information contained in this Wastestream Survey, and (ii) where applicable, the results of the analysis performed on the sample that is submitted with such Survey. A separate Approval for Waste Services is generated for each Wastestream Survey submitted by Customer. The identification number (Wastestream #) assigned to the Wastestream Survey is set forth in the Approval for Waste Services. Customer further acknowledges and agrees that ICC bears no testing, evaluation, collection, handling and processing procedures on the description of Waste Materials contained in the Wastestream Survey and/or Approval for Waste Services ("Waste Materials") relating to Waste Materials.</p> <p>2. Customer will tender and ICC will collect the Waste Materials at Customer's facility. At such time, Customer will provide ICC of the Wastestream Number(s) assigned to the Waste Materials tendered, and Customer will sign ICC's "Work Order" form which will state the Wastestream Number assigned to the Waste Materials being tendered. By signing the Work Order, Customer agrees that it represents and warrants to ICC that the Waste Materials tendered under that Work Order: (i) are accurately and completely described in the Wastestream Survey or the delivered Approval for Waste Services being the Wastestream Number assigned to such Waste Materials and shown on the Work Order; and (ii) were produced in the same process that produced the Waste Materials described in said Wastestream Survey or Approval for Waste Services. Waste Materials that do not conform to the description thereof in said ICC documentation will be handled in the manner set forth in Section 3 below.</p> <p>3. Subject to the remaining provisions of this Section 3, at the time ICC takes possession of and removes the Waste Materials from the Customer's facility, title, risk of loss and all other incidents of ownership to the Waste Materials shall be transferred from Customer and vested in ICC. Any marketable or salable material ICC may recover from the Waste Materials shall be the sole property of ICC. ICC shall have the right, but not the obligation, to inspect, sample, analyze and to test any Waste Materials before accepting such Waste Materials. Failure or refusal of Customer to provide ICC with access to such Waste Materials prior to ICC's acceptance thereof shall be deemed a nonconforming tender of these Waste Materials. ICC's exercise of, or failure to exercise, said right to inspect and sample shall not operate to relieve Customer of its responsibility or liability under this Agreement. Waste Materials shall be considered nonconforming for purposes of this Agreement if they do not conform to the description contained in this Wastestream Survey or the delivered Approval for Waste Services which bears the Wastestream Number shown on the Work Order that was signed by the Customer when the Waste Materials were tendered to ICC. In the event that any or all Waste Materials are discovered to be nonconforming, ICC may refuse to accept, or revoke its prior acceptance of the Waste Materials. A justified revocation of acceptance shall operate to revert title, risk of loss and all other incidents of ownership in or to such Waste Materials in Customer at the time revocation and return therefore are communicated orally or in writing to Customer. Waste Materials for which ICC has revoked its acceptance shall be properly stored and prepared for lawful transportation by ICC. Such Waste Materials will be returned to Customer within a reasonable time, unless within such time the parties agree to some alternate manner of handling and/or lawful disposition, and ICC confirms such agreement in writing to Customer. Payment shall be made in accordance with such agreement. Customer shall further pay ICC its reasonable expenses and charges for analyzing, handling, loading, preparing, transporting and storing nonconforming Waste Materials returned to Customer under this section. ICC's acceptance of any load or portion of a load of nonconforming Waste Materials shall not be deemed a waiver of ICC's right to reject any other loads of nonconforming Waste Materials.</p> <p>4. Customer represents and warrants that (a) all Waste Materials to be transferred to ICC hereunder will conform to the description of such Waste Materials contained in the Wastestream Survey or Approval for Waste Services which bears the Wastestream Number associated with that particular stream of Waste Materials; (b) said description of the Waste Materials is true and complete and fairly advises ICC of the hazards and risks known by the Customer to be incident to the collection, recycling, treatment and/or disposal of the Waste Materials; (c) containers tendered by it with the Waste Materials shall be clean, fit and proper for the purpose for which they are intended, and shall comply with all applicable laws, regulations and orders; (d) it holds clear title to all Waste Materials to be transferred hereunder, and it is under no legal restraint or order which would prohibit transfer of possession or title to such Waste Materials to ICC;</p> <p>5. Customer grants ICC, its agents and employees reasonable access to Customer's premises while providing service.</p> <p>6. ICC has the right to utilize various disposal site options for the Waste Materials described in the attached Waste Stream Survey or Approval for Waste Services which bears the Wastestream Number associated with that particular stream of Waste Materials, provided any such site has the appropriate permits for and will accept the Waste Materials. However, under RCRA and CERCLA laws and regulations, the generator of the Waste Materials has the ultimate legal liability for the evaluation and selection of the proper disposal site. ICC also has the right to provide transportation services.</p> <p>I hereby certify that all information submitted herein and attached contains true, accurate and complete descriptions of the Waste Materials. Any sample submitted for analysis is representative of the Waste Materials being offered for approval. All relevant information regarding known or suspected hazards to the possession of the generator has been disclosed. I have reviewed the physical facilities, administrative practices, and operational procedures (or have directed the completion of such a review) and based on this review do willingly make this certification. I authorize ICC to obtain a sample from any waste shipment for purposes of recertification. I will notify ICC if any generator status, waste description or any other information on this</p> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 40%;"> PRINTED NAME Ralph Taloff </div> <div style="width: 40%;"> SIGNATURE </div> <div style="width: 20%;"> DATE 5/10/12 </div> </div> <div style="margin-top: 10px;"> COMPANY NAME ESSROC </div>		

EXHIBIT C

FOR OFFICE USE ONLY

HCC Generator #: 150584HCC Service Agreement #: 365042

HERITAGE-CRYSTAL CLEAN, LLC ("HCC") GENERATOR CERTIFICATION

<u>ESSROC</u> (Customer)		Customer's EPA ID#:	
<u>3938 EASTON NAZARETH HWY</u> (Address)		Customer's State ID# (if applicable):	
<u>NAZARETH</u> (City)	<u>PA</u> (State)	<u>18044</u> (Zip Code)	(Phone Number)

THIS FORM IS DEEMED PART OF THE ABOVE REFERENCED SERVICE AGREEMENT BETWEEN HERITAGE-CRYSTAL CLEAN, LLC AND THE IDENTIFIED CUSTOMER AND ALL TERMS AND CONDITIONS AND CERTIFICATIONS CONTAINED THEREIN ARE DEEMED A PART HEREOF.

ALL SERVICES

☒ **Conditionally Exempt Small Quantity Generator (CESQG)** (for state equivalent designation)

The Customer hereby certifies that it qualifies as a Conditionally Exempt Small Quantity Generator by generating less than 100 kilograms (approximately 28 gallons) of characteristic (D codes), F, K, or U-listed hazardous waste during a calendar month, and less than one kilogram (approximately 2.2 pounds) of acute hazardous (P-listed) waste during a calendar month.

The Customer also certifies that no more than 1,000 kilograms of characteristic F, K, or U-listed hazardous waste and no more than one kilogram of acute hazardous waste was accumulated on-site at any one time during a calendar month. The Customer will inform HCC if more than 1,000 kilograms of characteristic F, K, or U-listed hazardous waste or more than one kilogram of acute hazardous waste is accumulated on-site at any one time during a calendar month.

☐ **Generator Does NOT Qualify as Conditionally Exempt Small Quantity Generator**

The Customer hereby certifies that it qualifies as:

☐ **Small Quantity Generator (SQG)**

> 100 kg / 220 lbs. Per month and

< 1000 kg / 2200 lbs. Per month

or

☐ **Large Quantity Generator (LQG)**

> 1000 kg / 2200 lbs. Per month

RL **GENERATOR'S QUANTITY CERTIFICATION**

PARTS CLEANER SERVICES

Customer represents, warrants and certifies as follows:

The Parts Cleaner fluids are generated in Customer's business operations without Customer adding any additives or other materials to the fluids and the fluids do not include any waste generated by any other person or any other business operation.

Customer understands that any Parts Cleaner fluids tendered to HCC for pickup have not been mixed with any materials regulated as hazardous waste under RCRA, or any polychlorinated bi-phenyls (PCBs) or other materials regulated under TSCA and all constituents present in such fluids are contaminants resulting from, and incidental to, normal use of the fluids as a degreaser or cleaner and any failure of these Certifications to be true and accurate may result in its fluids being classified as hazardous waste subject to federal and state laws and regulations.

☐ **Non-Hazardous Parts Cleaner Program Certification**

Customer hereby certifies that it qualifies for HCC's Non-Hazardous Parts Cleaner Program and understands that the HCC degreasing/cleaning fluids picked up by HCC may be managed as a non-hazardous waste.

☐ **Reuse Program Certification**

Customer hereby certifies that it qualifies for HCC's Reuse Program and understands that the HCC degreasing/cleaning fluids picked up by HCC may be utilized as an effective substitute for a commercial chemical product.

In the event of any breach of this Certification or if analytical results determine that the fluids do not qualify, said determination in HCC's sole discretion. HCC retains the right to disqualify the fluids from either the Non-Hazardous Parts Cleaner or Reuse Program in which case, Customer will be obligated to pay for testing, management and disposal of the fluids as hazardous waste. The person signing this Certification has reviewed the Customer's facilities, administrative practices and operational procedures (or has directed the completion of such review by others) and based upon such review, is willing to make this true, accurate and complete Certification.

SOLVENT USE CERTIFICATION

Customer acknowledges that HCC may, but is not required to, retain samples of materials, which may be used to confirm contaminants in said materials.

Customer represents, warrants and certifies that the waste materials described in this Agreement for these services meets the definition of used oil in 40 CFR 279 ("Used Oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result for such use is contaminated by physical or chemical impurities") and has not been mixed with other regulated materials, including but not limited to polychlorinated bi-phenyls (PCBs), other materials regulated under TSCA, or hazardous waste, and recognizes that HCC is relying on this Certification to properly manage these waste materials, and in the event that this Certification is untrue, Customer accepts complete responsibility for all costs related to the proper management and disposal of the waste materials and any commingled materials.

Customer acknowledges that the Used Oil will be co-mingled by HCC with used oil from third parties and that in the event the Used Oil is found to be non-conforming, either before or after said co-mingling, HCC may refuse to accept or revoke its prior acceptance of the Used Oil and Customer's indemnification in the Service Agreement shall apply to said non-conforming Used Oil and other used oil received from other parties which is affected thereby.

RL **USED OIL CERTIFICATION**

Customer hereby agrees to immediately notify HCC of any facts that would result in a change as to the truth, accuracy or completeness of the above Certification or any prior Certifications of the Customer. These Initialed Certifications hereinabove supersede all prior Certifications as to the Certification subject matter, but no other Certifications. The signature below applies to all of the Certifications Initialed hereinabove by the Customer.

RADU LUMGU
(Printed Name of Responsible and Authorized Party)

Radu Lumgu
(Signature)

8/29/2012
(Date)